



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534**

February 11, 2008

Mr. Jim Smythe  
511 East Main Street  
Murfreesboro, Tennessee 37130

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT #7006 0810 0000 1061 7184**

Subject: DIRECTOR'S ORDER NO. WPC08-0031  
ARMORY DRIVE PROPERTY  
RUTHERFORD COUNTY, TENNESSEE

Dear Mr. Smythe:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Patrick N. Parker, Manager  
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Nashville  
DWPC – Compliance File  
OGC

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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**IN THE MATTER OF:**

**JIM SMYTHE**

**RESPONDENT**

)  
)  
)  
) **DIVISION OF WATER  
POLLUTION CONTROL**

)  
) **CASE NUMBER WPC08-0031**

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

**II.**

Jim Smythe (hereinafter the "Respondent") is a resident of the state of Tennessee and is the owner of property located adjacent to 2350 Armory Drive in Murfreesboro, Rutherford County (hereinafter the "site"). Service of process may be made on the Respondent at 511 East Main Street, Murfreesboro, Tennessee 37130.

**JURISDICTION**

**III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the "Act"), has occurred,

or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

#### IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

#### V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

#### VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water

Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## VII.

The unnamed tributary to West Fork Stones River, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## FACTS

## VIII.

On December 10, 2007, the division received a complaint from the City of Murfreesboro’s Storm Water Management Division regarding construction activities and possible stream and wetlands alterations at the site.

On December 20, 2007, division personnel from the Nashville Environmental Field Office (N-EFO) investigated the complaint and noted that land disturbance activities in excess of one acre were underway. Division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures had not been installed and large areas of the site were bare and unstable, allowing eroded material to migrate into an unnamed tributary of West Fork Stones River, causing a condition of pollution. Additionally, extensive grading of the stream banks had occurred, allowing eroded material to migrate into the unnamed tributary. Division personnel

noted heavy equipment tracks crossing the unnamed tributary in several locations and also noted that a large segment of the channel had been filled, causing a condition of pollution. A subsequent file review determined that coverage under the TNCGP and written authorization under an appropriate ARAP had not been applied for nor or issued for these activities.

## **IX.**

On January 2, 2008, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the December 20, 2007, complaint investigation. The Respondent was instructed to immediately stabilize the site and install any necessary EPSC measures to prevent additional sediment from leaving the site or entering the unnamed tributary. Additionally, the Respondent was instructed to submit a NOI, SWPPP, site map and appropriate fee in order to obtain coverage under the TNCGP. The Respondent was further instructed to submit an application for a General ARAP for Stream Restoration and Habitat Enhancement. This ARAP application was to include a detailed stream restoration plan containing elements regarding stream restoration, bank stabilization and vegetative cover for habitat enhancement. The Respondent was instructed to submit the documents to the division with 30 days of receipt of the NOV.

## **X.**

On January 3, 2008, the NOV was delivered to the Respondent. To date, the division has not received the requested documents from the Respondent.

## VIOLATIONS

### **XI.**

By conducting land disturbance activities without coverage under the TNCGP and by altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

#### § 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

#### § 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

## **XII.**

By causing a condition of pollution in the unnamed tributary to West Fork Stones River, the Respondent has violated T.C.A. Section 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

## **XIII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures such that sediment is not allowed to leave the site or enter waters of the state.
2. The Respondent shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the NEFO at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243, and a copy of the written documentation and

photographic evidence to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534

3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondent shall within 14 days of receipt of this ORDER AND ASSESSMENT, submit a NOI, SWPPP, site map and appropriate fee to the division in order to obtain coverage under the TNCGP for construction activities at the site.
5. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit a Corrective Action Plan (CAP), detailing the proposed measures to be taken to restore the unnamed tributary in conformance with January 2, 2008, NOV. This CAP shall be submitted for review and approval, to the Water Pollution Control Manager in the NEFO and a copy to the E&C at the respective addresses shown above. The Respondent shall correct any deficiencies the division finds and submit a corrected CAP within 30 thirty of notification of any deficiencies.
6. The Respondent shall, within 30 days of receiving approval from the division, initiate the actions contained in the approved CAP and submit documentation on the date these activities are initiated. This documentation shall be submitted to the NEFO and a copy to the E&C at the respective addresses shown in Item 3.



7. The Respondent shall, within 120 days of approval, complete the actions contained in the CAP and submit documentation of completion to the division at the respective addresses shown in Item 3.
8. The Respondent shall pay DAMAGES to the division in the amount of ONE HUNDRED THIRTY EIGHT DOLLARS AND FORTY TWO CENTS (\$138.42) within 30 days of receipt of this ORDER AND ASSESSMENT.
9. The Respondent shall pay a CIVIL PENALTY of SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$17,500.00) to the division, hereby ASSESSED to be paid as follows:
  - a. The Respondent shall, within 30 days of entry of this ORDER, pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00).
  - b. If the Respondent fails to comply with Part XIII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
  - c. If the Respondent fails to comply with Part XIII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
  - d. If the Respondent fails to comply with Part XIII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.

- e. If the Respondent fails to comply with Part XIII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
- f. If the Respondent fails to comply with Part XIII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
- g. If the Respondent fails to comply with Part XIII, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.
- h. If the Respondent fails to comply with Part XIII, item 7 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.

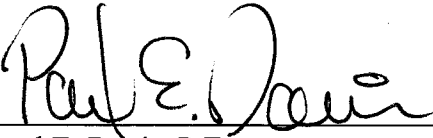
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or

regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 11<sup>th</sup> day of February 2008.

  
Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

#### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243.